

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 12, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1604

Cir. Ct. No. 2012CV1242

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GREG STETZER,

PLAINTIFF-RESPONDENT,

v.

NORTHERN REPAIR & WELDING,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
GREGORY B. HUBER, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Northern Repair & Welding (Northern) appeals a judgment awarding contract damages to Greg Stetzer. Northern argues the circuit court misinterpreted a contract regarding sales commissions. We reject Northern's argument and affirm.

BACKGROUND

¶2 Northern, a business owned by David Staszak, hired Stetzer as a salesperson in July 2008. On September 29, 2008, Stetzer and Staszak, the latter on Northern's behalf, entered into a written agreement concerning commissions. The untitled agreement consisted of three one-sentence paragraphs. It provided:

For all sales of Northern Equipment made by Greg Stetzer from October 1, 2008, Northern Repair & Welding will pay Greg Stetzer a 2% commission upon payment in full for any invoice less all deal and/or customer discounts, freight & taxes.

2% Commissions will be split equally among all who make a combined deal, employees only.

Commission payment will be made the following week after customer has paid in full.

¶3 Stetzer voluntarily resigned his employment with Northern in April 2012 without prior notice. At that time, Stetzer had five sales that he alone had made, but that were not yet delivered and/or paid for. Stetzer sued Northern, alleging he was owed commissions on these sales.¹ The circuit court held Stetzer was entitled to commissions on the sales. Northern now appeals.

DISCUSSION

¶4 Northern argues the circuit court misinterpreted the parties' contract. Contraction interpretation presents a question of law that we review de novo. *Kernz v. J.L. French Corp.*, 2003 WI App 140, ¶8, 266 Wis. 2d 124, 667 N.W.2d 751. When interpreting contracts, we seek to determine and give effect to the

¹ Stetzer also prevailed on a claim for unused vacation days. Northern does not appeal that issue.

parties' intentions, and we presume their intentions are expressed in the language of the contract. *Estate of Kriefall v. Sizzler USA Franchise, Inc.*, 2012 WI 70, ¶21, 342 Wis. 2d 29, 816 N.W.2d 853. Where contract language is unambiguous, we apply that plain language as the expression of the parties' intent. See *Kernz*, 266 Wis. 2d 124, ¶9. However, if the contract is ambiguous, we may turn to extrinsic evidence to determine the parties' intent. *Id.*, ¶10. "Contract language is considered ambiguous if it is susceptible to more than one reasonable interpretation." *Danbeck v. American Family Mut. Ins. Co.*, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150.

¶5 Northern contends Stetzer was not entitled to any commissions because he was no longer an employee when the disputed orders were delivered and/or paid for. Northern's primary argument is as follows:

[T]he provisions of paragraphs one and two must be read together. ...

Logic dictates that the words "employees only" applies to all the proceeding [sic] provisions. Otherwise, the words "employees only" would only apply to split commissions. No business splits commissions with non-employees. Strangers can't make a sale for a business and claim the right to a commission. There is nothing in the record indicating that non-employees were involved in making sales for Northern Repair. If "employees only" refers to only split commissions the language is surplusage, which is to be avoided in contract interpretation.

¶6 Additionally, Northern emphasizes that a construction that avoids a contract of indefinite duration is preferable. See *Kovachik v. American Auto. Ass'n*, 5 Wis. 2d 188, 92 N.W. 2d 254 (1958). Thus, it argues:

All language between "October 1, 2008" and "employees only" discusses how commissions are computed. It is only by connecting "October 1, 2008" and "employees only" that the contract is given a term and an ending date. "Employees only" modifies all the language before by

expressing a clear intention that commissions were only paid to employees. When employment ends, so does the right to receive commissions.

¶7 We reject Northern’s arguments as patently unpersuasive. The meaning of the contract is clear from both its language and structure. The placement of “employees only” within the second sentence and after a comma makes it evident that the phrase modifies only language in that sentence. Further, it would make no sense whatsoever to apply the “employees only” phrase to the first sentence. If one were to insert that language in the first sentence, it would make the sentence unintelligible. And because Stetzer would be an employee at any time he made a sale for Northern, the added phrase would be rendered meaningless surplusage. No reasonable person with a command of the English language would add “employees only” to the first sentence in an attempt to explain that commissions would not be paid after the date Stetzer left employment, regardless of when he had made a sale.

¶8 We also reject Northern’s argument that it would be unreasonable to apply “employees only” to the language of the second sentence. First, that is where the phrase was placed. Second, even if the phrase did apply to the first sentence, it would still apply to the second sentence, which means the phrase would apply to split commissions despite Northern’s assertion that this would not make sense. Regardless, it is reasonable to apply the phrase to split commissions. Northern creates a false dichotomy when it equates nonemployees to “strangers.” Nonemployees could also include independent contractors or the company’s owner, Staszak, who signed the contract on Northern’s behalf.

¶9 Finally, we reject Northern’s argument that its interpretation is necessary to avoid a contract of indefinite duration. After his resignation, Stetzer

would obviously not be soliciting or making any further sales for Northern. Thus, the contract would not be indefinite.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

